

(2012) 06 KL CK 0208
In the High Court Of Kerala
Case No : W.A. No. 1019 of 2012

Kerala State Co-operative Employees Pension Board	APPELLANT
Vs	
C.D. Udayakumar and Others	RESPONDENT

Date of Decision : 27-06-2012

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 17
Kerala Co-operative Societies Act, 1969 — Section 61, 61(1), 80A, 80A(1)

Citation : (2012) 3 KLJ 680

Hon'ble Judges : C.N. Ramachandran Nair, J;C.K. Abdul Rehim, J

Bench : Division Bench

Advocate : P. Ravindran, M.R. Sabu, Anu Sivaraman and S. Sheeja Kumary, for the Appellant; D. Sreekumar, SC, N.N. Sugunpalan, Sr., T.N. Girija, SC, P. Parameswaran Nair, ASG, D. Somasundaram, Spl. GP and V.G. Arun, for the Respondent

Final Decision : Disposed Off

Judgement

C.N. Ramachandran Nair, J.—All the connected Writ Appeals are filed by the Kerala State Co-operative Employees Pension Board challenging the judgment of the learned Single Judge declaring entitlement of the employees, who are already members of the Employees Provident Fund Scheme, 1952 and also members of the Employees Pension Scheme, 1995 to continue with the said Organisations even after formation of the Pension Fund under the appellant by the State Government for the employees of the Co-operative Banks in Kerala. We have heard Shri. P. Ravindran, learned Senior counsel, along with Shri. K.R. Sunil, learned Standing Counsel for the appellant, Shri. Abraham Vakanal, learned Senior Counsel, Shri. Koshi George, Shri. P.N. Mohanan for the party respondents and also learned Special Government Pleader for the State.

2. There is no dispute on the applicability of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter called as the EPF Act for short) to the employees of District Co-operative Banks and State Co-operative Bank

because in all these Banks the employee strength is above the statutory limit of 50. Further Section 61 of the Kerala Co-operative Societies Act, 1969 (hereinafter referred to as the KCS Act for short) makes it mandatory for establishment of provident fund for the employees either by the Society itself or by making contribution to the Employees Provident Fund if it is found more beneficial to the employees. Admittedly, the employees of the District Co-operative Banks and the State Co-operative Bank have joined under the Employees Provident Fund Scheme, 1952 and Employees Pension Scheme, 1995 for provident fund and pension respectively. While so, Section 80A was introduced to the KCS Act with effect from 20/08/1993 creating Self Financing Pension Scheme for establishment of Pension Fund under which the appellant was constituted. Even though the Self Financing Pension Scheme was established in the year 1993, the employees of both the District Co-operative Banks and the State Co-operative Bank continued to be members of the Employees Provident Fund Scheme, 1952 and the Employees Pension Scheme, 1995, and the members who have made or are making contributions are getting pension and other benefits from the said Schemes. However, in 2009, based on the request from the Co-operative Banks and the State Government, the EPF Commissioner proposed to transfer the funds of the members of the District Co-operative Banks as well as the State Co-operative Bank to the appellant Board, which was challenged in Writ Petitions filed by retired employees as well as serving employees of both these categories of Banks. Before the learned Single Judge, the question raised was whether the retired employees as well as the employees already continuing as members of the Employees Provident Fund Scheme, 1952 and the Employees Pension Scheme, 1995 could be compulsorily transferred by transfer of fund to the appellant Board. The learned Single Judge without considering the question as to whether the Employees Provident Fund Scheme, 1952 and the Employees Pension Scheme, 1995 or the appellant Board is more beneficial to the employees, held that the fund of those employees who are retired from service cannot be compulsorily transferred to the appellant Board. The position is same with regard to the existing employees, who are members of the Employees Provident Fund Scheme, 1952 and the Employees Pension Scheme, 1995. It is against this common judgment of the learned Single Judge, these Writ Appeals are filed by the State Co-operative Employees Pension Board.

3. After hearing both sides, we do not think the appellant has any justification even to file appeals against the judgment of the learned Single Judge because what is stated in Section 61(1) of the KCS Act and Section 17 of the EPF Act is that employees are free to join whichever is the Provident Fund Organisation which gives them better benefits. There is controversy raised between both sides in as much as retired employees and employees who are already members of the Employees Provident Fund Scheme, 1952 and the Employees Pension Scheme, 1995 claim that the Central Schemes are more favourable to them, the appellant's case is that the State Pension Scheme is better for the employees. We do not think there is any necessity for this Court to decide the issue because

it would be safe to leave it to the employees to decide as to which is more beneficial to them. The only question that needs to be considered by us is whether on the constitution of the Appellant Board u/s 80A of the KCS Act, there is any mandatory legal requirement either under the KCS Act or under the EPF Act to terminate memberships and transfer the funds of retired employees as well as employees who are already members of the Employees Provident Fund Scheme, 1952 and the Employees Pension Scheme, 1995 to the Appellant Board. Learned counsel for the appellant as well as the learned Special Government Pleader for the State referred to Rule 58 of the Co-operative Societies Rules and also Clauses 3 and 29 of the State and District Co-operative Employees Pension Scheme, which provide for compulsory transfer of funds from existing provident fund account to the appellant Board. However, learned counsel for the respondents referred to the first proviso to Rule 58 of the Co-operative Societies Rules, which states that when the EPF Act is applicable to the Society, and the provisions of that Act are more beneficial, the Fund shall be maintained in accordance with the provisions of that Act. Further, it is stated in Sub Rule (4) of Rule 58 that for discontinuance of benefit of Fund prior permission of the EPF Commissioner is required. What we notice from the proviso to Section 61(1) of the KCS Act is that after establishment of Self Financing Pension Scheme under the appellant Board u/s 80A(1) of the KCS Act, the provisions of EPF Act do not apply to the establishment, which is required to establish a Provident Fund by itself so that the appellant will operate the Pension Fund, and provident fund will be managed by the Trust-Fund established by the Co-operative Banks. However, neither Section 80A nor Section 61(1) of the KCS Act provides for compulsory transfer of funds of retired employees as well as serving employees who are members of the Employees Provident Fund Scheme, 1952 and Employees Pension Scheme, 1995 to the appellant Board. So much so, we feel the appellant Board or the State Government or the Banks cannot demand transfer of funds of the employees, who are members of the Employees Provident Fund Scheme, 1952 and Employees Pension Scheme, 1995, to the appellant Board and discontinue their benefits under the Schemes of the Central Act without their consent. Since both the appellant as well as the Employees Provident Fund Organisation and the Pension Fund operate for the benefit of the employees, we feel those who wish to opt to transfer the membership from the Employees Provident Fund Scheme, 1952 and the Employees Pension Scheme, 1995 can apply for the same and in such cases the EPF Commissioner should transfer the funds. In other words, transfer of fund from Employees Provident Fund Scheme, 1952 and Employees' Pension Scheme, 1995 of any retired or continuing member should be made only with his/her consent. It is for the appellant Board to fix a time limit for exercising the option for retired employees and for serving employees and in all such cases Fund will be transferred to the appellant Board from the Employees Provident Fund and Pension Schemes.

These Writ Appeals are disposed of as above.